

## **City of Reading Charter Board**

Annual Report 2013

<b><u>Summary of Board Activity</u></b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b><u>Education</u></b>								
Orientation Sessions Conducted	4	1	0	0	2	0	2	1
BCTV Programs	5	6	5	6	1	0	1	0
Community Presentations	-	-	-	-	1	-	-	-
<b><u>Advisory</u></b>								
Requests Received	4	2	6	7	3	5	3	5
Opinions Issued	4	2	4	7	3	5	3	4
<b><u>Enforcement</u></b>								
Complaints Received	10	9	4	3	5	0	4	6
Complaints Withdrawn	0	0	1	0	0	0	0	1
Complaints Dismissed	4	7	2	0	2	0	2	2
Findings report Issued	3	0	2	0	3	1	2	1
Evidentiary Hearings	1	0	1	0	0	0	2	0
Final Orders Issued	2	1	1	0	1	3	1	0
Rulings on Appeal	1	1	1	1	1	1	1	2
<b><u>Miscellaneous Litigation</u></b>	-	-	-	-	-	-	1 <sup>1</sup>	1 <sup>2</sup>
<b><u>Other</u></b>								
Right to Know Requests	-	-	-	-	-	-	0	2
Right to Know Appeals	-	-	-	-	-	-	0	2

### **I. Education**

The Board conducted the second session of a two part comprehensive education for newly elected City Council members, city employees, and members of the general public. The session, conducted February 5, 2013, dealt with Home Rule Law and The Charter, with emphasis on the legislative branch of city government and relevant case studies.

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<sup>1</sup> Declaratory Judgment Action

<sup>2</sup> Declaratory Judgment Action (ongoing)

## II. Advisory

The Board rendered four advisory opinions concerning matters of home rule and enforcement of the City Charter.

### Advisory Opinion #31 – Issued April 8, 2013 Regarding Legal Counsel for Elected Officials

Councilor Randy Corcoran in a letter dated March 11, 2013 requested an advisory opinion regarding the City's obligation to provide legal counsel to an elected official when his or her actions violate the City Charter, the Administrative Code, or the Ethics Code. The Board opined that there is no provision of the Charter or Administrative Code expressly authorizing or prohibiting the City's retention of and payment for counsel for a City official or employee where that person's conduct violated the Charter, Administrative Code or Ethics Code. There is no provision for any City official to retain counsel paid for by the city, except for the Mayor and City Council when a conflict prohibits the City Solicitor from serving as counsel, in accordance with Administrative Code sections 1-123, 1-132, and 1-192(1)(B). Finally, special counsel under Charter section 801(b) may be retained by the Mayor to represent only the City.

### Advisory Opinion #32 – Issued April 19, 2013 Regarding The Mayor's ability to enter into an MOU with Reading Area Water Authority

Councilor Randy Corcoran in a letter dated March 11, 2013 requested an advisory opinion regarding whether or not the MOU to transfer trash and recycling billing to the Reading Area Water Authority, without Council approval, resulting in a reduction of City staff, violated the Charter or Administrative Code. The Board opined that the request addressed specific retrospective matters that had already substantially occurred. Therefore, the Board declined to issue an advisory opinion on these matters.

### Advisory Opinion #33– Issued May 9, 2013 Regarding the Necessity of a vote by Council for Appointments to CRC

The City Solicitor in a letter dated April 9, 2013 requested an advisory opinion regarding whether City council may appoint members to the Charter Review Commission without a vote. The Board opined that a vote must occur for City Council to appoint members to a Charter Review Commission, in accordance with the City of Reading Home Rule Charter Section 1203.

### Advisory Opinion #34 – Issued December 4, 2013 Regarding Referendum Ordinance on the Amendment of the Charter

The City of Reading Charter Review Commission in a letter dated October 29, 2013 requested an advisory Opinion regarding whether the Mayor and City Council could be in violation of the City Charter if they fail to enact an ordinance requesting a ballot initiative from the recommendations of the Charter Review Commission Report. The Board opined that under §§ 1203 and 1204(d) of the Charter, City Council must adopt an Ordinance setting forth the Charter amendments proposed by the Commission, and the Mayor must sign the ordinance, such that the proposed amendments “shall be placed on the ballot no later than the next municipal election.”

### **III. Enforcement**

#### **Investigation #32– Final Order Issued October 24, 2012**

##### **Case History:**

In response to a complaint received March 23, 2012, an evidentiary hearing was conducted September 24, 2012. By Final Opinion and Order dated October 24, 2012, the Board ordered administrative fines and public censure of Mayor Vaughn Spencer, substantially holding that the Mayor violated the Charter and Administrative Code by : 1) employing a practice to hire four full-time employees under the guise of being part-time employees, and not having those employees first appear on an amended or revised budget and position ordinance, 2) failing to execute, enforce and obey the ordinances of the City, specifically, Administrative Code §§ 1-122(1)(E), 1-122(1)(b), 1-186(3)(G) and 1-186(9)(c)(2)(d) and, 3) failing to ensure that all provisions of the Charter and acts of City Council, subject to enforcement by the Managing Director, are faithfully executed by the Managing Director. On November 21, 2012 the Mayor, through counsel from Duane Morris LLP, filed a petition for review of the Final Order to the Berks County Court of Common Pleas. Lastly, by order of the Court dated November 27, 2012, all documents filed by the parties in this action, and the entire record before the Charter Board was mandated to be kept and maintained under seal.

##### **Activity during 2013**

On or around May 2, 2013, the Mayor, by joint stipulation, waived his rights of confidentiality under the Charter Board Ordinance regarding Investigation No. 32, and by Order of Judge Timothy Rowley, all records and proceedings were unsealed on May 10, 2013. The case was briefed by both parties and heard for argument on June 20, 2013 before Judge Timothy Rowley. On July 16, 2013 Judge Rowley reversed and vacated the Final Opinion and Order of the Charter Board. The Board appealed to the Commonwealth Court on August 14, 2013. On August 22, 2013, through its Solicitor Eric Smith, the Board submitted a Concise Statement of Matters Complained of on Appeal. On October 1, 2013, the Board voted to retain attorney Kevin McKeon as Special Counsel. In late October 2013, through counsel, the Mayor filed an application to quash the appeal, alleging that the Charter Board lacked standing before the Court. Argument for the application to quash was heard telephonically on November 1, 2013. Commonwealth Court Judge Robert Simpson opined on November 4, 2013 that action on the application would be deferred, and would be argued, on its merits along with other issues raised on appeal. At the end of 2013, the case remained on appeal to the Commonwealth Court.

### Investigation #34 – Final Order Issued January 18, 2013

#### **Case History:**

In response to a complaint received June 18, 2012, an evidentiary hearing was conducted December 19, 2012.

#### **Activity during 2013**

By final Opinion and Order dated January 18, 2013, the Board ordered both administrative and punitive fines, as well as public censure of Mayor Vaughn Spencer, substantially holding that the Mayor violated the Charter and Administrative Code by: 1) combining and exercising the powers of the Offices of Mayor and Managing Director as related to matters of employment, contracts for professional services, and the transfer of funds and 2) electing to combine the power, person and the office of the Mayor and the Managing Director instead of appointing a Temporary Managing Director with Council approval. The Mayor, through counsel from Duane Morris LLP, filed a petition for review of the Final Order to the Berks County Court of Common Pleas on February 15, 2013. The petition for review was accompanied by a joint stipulation to file and maintain the case under seal.

The case was briefed by both parties and heard for argument on September 16, 2013 before Judge Timothy Rowley. On September 17, 2013 Judge Rowley reversed and vacated the Final Opinion and Order of the Charter Board. In October 2013, through counsel, the Mayor filed an application to quash, alleging that the Charter Board lacked standing before the Court. Argument for the application to quash was heard telephonically on November 1, 2013. Commonwealth Court Judge Robert Simpson opined on November 4, 2013 that action on the application would be deferred, and would be argued, on its merits along with other issues raised on appeal. On November 8, 2013, through its Solicitor Eric Smith, the Board submitted a Concise Statement of Matters Complained of on Appeal. At the end of 2013, the case remained on appeal to the Commonwealth Court, and the trial court record remained under seal.

#### **IV. Miscellaneous Litigation**

##### Declaratory Judgment – Filed November 26, 2012

#### **Case History**

A complaint seeking Declaratory Judgment was filed in Berks County Court November 26, 2012. The Plaintiff, Mayor Vaughn Spencer named The City of Reading Charter Board and each individual member in their official capacity as Charter Board members as defendants. This action (Docket #12-24830) sought declarations including: 1) the Charter Board's Opinion #28 is erroneous and conflicts and is inconsistent with the Charter and is void; 2) the Charter Board's Opinion #28 is otherwise being applied and relied upon erroneously and impermissibly in a precedential, non-advisory fashion by the Charter Board, by its agents and by other City officials; and 3) it is not a violation of the Charter for the Mayor to hire employees in any job position as he deems necessary to effectively operate

the City government even absent an identification of each such employee's job position in the annual budget or annual position ordinance and/or without receiving prior approval of Council, except to the extent that the Charter expressly provides otherwise in Sections 400(a), 501, 603, 607, and 801.

### **Action during 2013**

On April 12, 2013 a demand letter was sent to the Mayor requesting dismissal of the declaratory judgment action; the Mayor, through counsel, declined. An amended complaint was subsequently filed in April 2013, followed by preliminary objections of the Board filed on

April 23, 2013. The Mayor, through counsel, then filed a second amended complaint on or around May 13, 2013. Preliminary objections raising the same grounds as prior objections were filed by the Board May 30, 2013. The Board again sought dismissal by the Mayor in November 2013; again, the Mayor, through counsel, declined. The Board also successfully sought dismissal of individual members in their official capacity as Charter Board members as defendants. However, at the end of 2013 the action remained ongoing before the Court of Common Pleas.

### **V. Other**

#### **Right to Know Requests**

#### **Request #1 (amended) and Request#2**

On January 17, 2013, Don Spatz of the Reading Eagle submitted an amended open records request to ask for the Final Opinion and Order respecting Investigation No. 34. The Charter Board assigned his request the identification number "REQ 1 AMD." Mr. Spatz additionally requested the Final Opinion and Order respecting Investigation No. 32. The Charter Board assigned this request the identification number "REQ 2". Both requests were denied as the Board determined these documents were protected from disclosure under City Ordinance 46-2005.

Mr. Spatz, on behalf of the Reading Eagle, appealed both requests to the Commonwealth of Pennsylvania Office of Open Records on February 6, 2013. The office of open records subsequently permitted the Pennsylvania NewsMedia Association to intervene. By Final Order issued May 5, 2013 the Office of Open Records denied in part, and dismissed in part Mr. Spatz's request by finding that while Mr. Spatz's request on behalf of the Reading Eagle was proper, the documents sought were subsequently placed under seal per order of the Berks County Court of Common Pleas. No appeals were sought.

### **Request #3**

On February 4, 2013, Don Spatz of the Reading Eagle submitted an open record request to ask for a redacted document showing only penalties imposed in the Final Opinion and Order respecting Investigation No. 34. The request was denied on February 7, 2013 as the Board determined these documents were protected from disclosure under City Ordinance 46-2005.

## **VI. Administrative Issues:**

### **a) Membership**

- The Board received with regret the resignation of Vice Chair John Slifko effective February 18, 2013. The Board noted the excellent service of Mr. Slifko and accepted his resignation with regret.
- The term of member Elizabeth Stanley expired April 26, 2013. Ms. Stanley completed the application for reappointment which continues to await mayoral approval.
- On July 8, 2013, new Board member Thomas Anewalt was appointed to a five year term ending April 26, 2018. Mr. Anewalt will begin his service after the conclusion of his current appointment to the City of Reading Charter Review Commission.
- On October 14, 2013, new Board member James Fegley was appointed to a five year term ending April 26, 2017. Mr. Fegley attended his first meeting in November 2013.

### **b) Staffing**

- The Board continued to retain Eric Smith, Esq. of High Swartz as Charter Board Solicitor and Elizabeth McGovern, Esq. of Hartman Shurr as Charter Board Investigative Officer. As previously noted, Kevin McKeon, Esq. was retained October 1, 2013 as Special Counsel for the Commonwealth Court appeals of Investigations #32 and #34.

### **c) Budget**

- The Board maintained an ongoing dialogue with City Council regarding the Charter Board budget, approved at \$47,500 for 2013 with expenditures through December 2013 approximating \$224,387.26.

d) **Projects**

- The Board, with legal assistance from High Swartz, continued its work on the Charter annotation project. The Board's goal is to incorporate and reference all Charter relevant case law and Advisory Opinions. Work started during the summer of 2011 and continues through the present. As of September 26, 2013, this working document contained annotated comments on Advisory Opinions 1 through 33, and Investigation Nos. 1 to 31.

Respectfully submitted,

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Susan J. Williams, Vice Chair  
City of Reading Charter Board